

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

**BROADVOICE, INC., FRANK T. GANGI, AND LESLIE BERRY,** Plaintiffs v. ) ) Case No.: ) (Massachusetts Superior Court, ) Middlesex County, C.A. No. 2010-0218) ) ) **DEFENDANTS' NOTICE OF REMOVAL TO FEDERAL COURT**) ) ) ) ) **TP INNOVATIONS LLC AND MICHAEL T. BEDNAR,** Defendants. ) ) ) ) )

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF MASSACHUSETTS

PLEASE TAKE NOTICE THAT Defendants in the above-entitled matter hereby remove to this Court the state court action described below.

Defendants TP Innovations LLC (“TP Innovations”) and Michael T. Bednar (“Bednar”) (collectively, “Defendants”), hereby give notice that this action is removed to the United States District Court for the District of Massachusetts from the Massachusetts Superior Court, Middlesex County. Pursuant to 28 U.S.C. § 1441, Defendants state as follows:

**State Court Action:** TP Innovations and Bednar are named as defendants in a civil action filed in the Massachusetts Superior Court, Middlesex County, styled *Broadvoice, Inc., Frank T. Gangi, and Leslie Berry v. TP Innovations LLC and Michael T. Bednar*, C.A. No. 2010-0218.

**Commencement of State Court Action:** The state court action was commenced when

plaintiffs' Summons and Complaint were filed in the Massachusetts Superior Court on January 20, 2010. Service of the Summons and Complaint was effected on Defendant TP Innovations on or about January 21, 2010 and on Defendant Bednar on or about January 26, 2010. This Notice of Removal is timely, in that it is being filed within thirty (30) days of receipt of service of the Summons and Complaint by Defendants.

**Record in State Court:** The following pleadings, as are available in the file of the state court action, encompass all of the pleadings in this action as of the date hereof:

Summons

Complaint

Civil Action Cover Sheet

Return of Service, TP Innovations LLC

Return of Service, Michael T. Bednar

The Summons, Complaint, and Civil Action Cover Sheet are attached hereto as Exhibit A.

**Diversity of Citizenship is Basis for Federal Court Jurisdiction:** This dispute is a controversy between citizens of different states and this Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332. Neither of the defendants is a citizen of the Commonwealth of Massachusetts.

- a. Plaintiff Broadvoice, Inc. is a corporation organized under the laws of the State of Delaware with a principal place of business in Billerica, MA.
- b. Plaintiff Frank T. Gangi is an individual citizen of the Commonwealth of Massachusetts residing in Brookline, MA.
- c. Plaintiff Leslie Berry is an individual citizen of the State of New Hampshire residing in Derry, NH.

- d. Defendant TP Innovations is a corporation organized under the laws of the State of Texas, with a principal place of business in Dallas, TX. At the time of filing and at the time of removal, Defendant TP Innovations is and was a citizen of the State of Texas.
- e. Defendant Bednar was and is an individual citizen of the State of Texas residing in Dallas, TX both at the time of filing and at the time of removal.

**Nature and Description of Case:** This action seeks monetary damages, multiple damages, attorney fees and costs, and injunctive relief for alleged defamation, alleged trade disparagement, alleged intentional infliction of emotional distress, and alleged violation of M.G.L. c. 93A § 11, arising out of the alleged posting by Defendants of certain information on an Internet website.

**Amount in Controversy:** Plaintiffs have not indicated a specific amount of damages. However, in a separate complaint filed by Michael Couture, another employee of Plaintiff Broadview, Inc. arising out of the same alleged facts and asserting essentially identical claims based on defamation and intentional infliction of emotional distress, Mr. Couture has specified damages in the amount of \$100,000.00. *Couture v. TP Innovations LLC and Bednar*, C.A. No. 2010-233 (Mass. Super. Ct.).<sup>1</sup> In this case, the Plaintiffs assert claims based on defamation and intentional infliction of emotional distress, but in addition assert claims for trade disparagement and violation of M.G.L. c. 93A. Moreover, Plaintiffs in this case seek to recover multiple damages and attorney fees under M.G.L. c. 93A. Defendants therefore have good reason to believe that the amount in controversy in this case is well in excess of the jurisdictional minimum of \$75,000.

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<sup>1</sup> Defendants are contemporaneously filing a Notice of Removal of the *Couture v. TP Innovations and Bednar* action, and anticipate seeking consolidation of that action and this action for all purposes.

**Applicable Statutes:** This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332. This action is removable to this Court pursuant to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1446.

**Concurrent Notice to State Court:** Defendants are concurrently filing a copy of this Notice of Removal with the Clerk of the Massachusetts Superior Court, Middlesex County, pursuant to 28 U.S.C. § 1446(d).

DATED this 10<sup>th</sup> day of February 2010.

/s/ Mitchell J. Matorin  
Mitchell J. Matorin (BBO#649304)  
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*Counsel for Defendants*

**Certificate of Service**

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to counsel for Plaintiff on February 10, 2010 via first-class mail addressed as follows:

William J. Rooney, Jr.  
Law Offices of William J. Rooney, Jr.  
89 Access Road  
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Norwood, MA 02062

/s/ Mitchell J. Matorin